

In their Lordships' opinion these errors are sufficient to vitiate the Federal Court's conclusion that Gill J.'s valuation ought to be set aside. But for them it does not appear that the Federal Court would have reached the stage at which it felt entitled to embark upon its own valuation. It has not been made apparent to their Lordships that there are any other grounds upon which it can be shown that the judge either failed to weigh correctly the reliability of the divergent opinions of the respective valuers as to comparables or to appreciate the different legal incidents of divided and undivided shares in land.

For these reasons, their Lordships consider that the Federal Court erred in principle in rejecting the valuation placed upon the land by Gill J. They will advise the Yang di-Pertuan Agong that this appeal should be allowed and the decision of the High Court restored and that the respondents should pay the appellant's costs of this appeal and in the Federal Court.

Appeal allowed.

Solicitors: *Stephenson, Harwood & Tatham; Graham Page & Co.*

SINGAPORE REPORT

PUBLIC PROSECUTOR v. ALBERT SEE

[A.Cr.J. (Wee Chong Jin C.J.) October 10, 1970]

[Singapore — Special Case No. 1 of 1970]

Road Traffic — Third Party insurance — Using a motor vehicle on the road without there being in force in relation to such user a policy of insurance in respect of third party risks — Person possessing provisional driving licence driving without "L" plates — Person driving after expiry of provisional driving licence — Person disqualified from driving — Road Traffic Ordinance, 1961, s. 13(1) — Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960, s. 3.

This was a case stated by the first traffic magistrate. The defendant was found driving a motor-cycle and at the time he was in possession of a provisional driving licence which had expired and no "L" plates were displayed on the front and rear of the motor-cycle. He had a policy of insurance covering third party risks which was still valid at the material date but which provided that it applied when the holder was "permitted in accordance with the licensing or other laws or regulations to drive" the motor cycle or "has been so permitted and is not disqualified by order of a court or by reason of any enactment or regulation in that behalf from driving it." The defendant was convicted on a charge under section 3(2) of the Motor Vehicle (Third Party Risks and Compensation) Ordinance, 1960. The question of law reserved for the consideration of the High Court was whether or not a learner driver who drives his motor vehicle whilst in possession of an expired provisional driving licence and who fails to display "L" plates or otherwise infringes the licensing rules or other regulations governing learner drivers is guilty of an offence under section 3(1) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, for using the motor vehicle without there being in force in relation to such user a policy of insurance in relation to third party risks.

Held: (1) if a learner driver "drives" his motor vehicle on the road without displaying "L" plates, he is not permitted in accordance with or by reason of rule 13(6) (c) of the Motor Vehicles (Driving Licences) Rules 1969, to so "drive" his

A motor cycle and he has therefore broken a term of the insurance policy;

(2) if a learner driver, whether or not he displays "L" plates "drives" his motor cycle on the road after his provisional driving licence has expired, he is disqualified by reason of section 13(1) of the Road Traffic Ordinance, 1961, from "driving" it and he has thereby again broken a term of the insurance policy;

B (3) on these grounds the answer to the question stated should be in the affirmative and the learned magistrate was right in convicting the defendant.

Tan Kwong Chin v. Public Prosecutor⁽⁵⁾ distinguished.

Cases referred to:-

(1) *Dodds v. R.* (1962) 3 M.C. 320.

(2) *Edwards v. Griffiths* [1953] 1 W.L.R. 1199.

C (3) *Mumford v. Hardy & Anor.* [1956] 1 W.L.R. 163.

(4) *R. v. Tan Hong Heng* [1965] 1 M.L.J. 124.

(5) *Tan Kwong Chin v. Public Prosecutor* [1959] M.L.J. 252.

SPECIAL CASE.

Chia Quee Khee (Deputy Public Prosecutor) for the Public Prosecutor.

D Defendant in person.

Wee Chong Jin C.J.: This is a case stated by the first traffic magistrate before whom the defendant was charged with two offences, one of which was for using a motor-cycle on the road without there being in force in relation to the user a policy of insurance in respect of third-party risks, an offence under section 3(1) and punishable under section 3(2) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960.

The facts were that on 23rd January 1970 the defendant was riding a motor-cycle and at the time was in possession of a provisional driving licence which had expired on 7th October 1969. No "L" plates were displayed in the front and rear of the motor-cycle. He had a policy of insurance covering third-party risks for the motor-cycle which was still valid at the material date. Paragraph 5 of the insurance policy provided as follows:—

"Persons or classes of persons entitled to drive

G The Policyholder only.

F Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

H On his plea of guilty the magistrate convicted and fined him \$60 and disqualified him from holding or obtaining a driving licence for a period of 12 months in respect of the offence under the said section 3(2). The question of law reserved for the consideration of this court is whether or not a learner driver who drives his motor vehicle whilst in possession of an expired provisional driving licence and who fails to display "L" plates or otherwise infringes the licensing rules or other regulations governing learner drivers is guilty of an offence under section 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960.

I The answer to this question must, in the first place, depend upon a consideration of the material provisions of the insurance policy in question. I am assuming

that nowadays all insurance policies covering third party risks which are issued in Singapore contain a proviso in identical terms with the proviso in paragraph 5 of the insurance policy in question in this case.

In the present case the defendant, under the terms of paragraph 5 of his insurance policy, is "entitled to drive" his motor-cycle provided that when driving it he "is permitted in accordance with the licensing or other laws or regulations to drive" it or "has been so permitted and is not disqualified... by reason of any enactment or regulation in that behalf from driving" it.

It seems to me to be clear beyond doubt that if he "drives" (even during the period when his provisional driving licence is in force) his motor-cycle on the road without displaying "L" plates, he is not permitted in accordance with or by reason of rule 13(6)(c) of the Motor Vehicles (Driving Licences) Rules 1969, as amended, to so "drive" his motor-cycle and he has thereby broken a term of the insurance policy. On this point the case of *Dodds v. Regina*⁽¹⁾ is clear authority.

In that case Rose C.J. said at page 322: —

"But when you look at the proviso, and it is an important proviso, it says provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive a motor vehicle.

It seems to be clear that his permission to drive this vehicle is limited. He is not in the position of a man who has passed a driving test and who holds therefore what might be called a full driving licence. He is only permitted on the road by virtue of the provisional driving licence pending his passing the full test. During that period the law says, rightly or wrongly, that he must carry learner plates. Therefore he has broken a term of the policy by not carrying learner plates and is not covered by the policy."

It also seems to me to be clear beyond doubt that if the defendant, whether or not he displays "L" plates, "drives" his motor-cycle on the road after his provisional driving licence has expired, he is disqualified by reason of section 13(1) of the Road Traffic Ordinance 1961 from "driving" it and has thereby broken a term of the insurance policy. The material provisions of section 13(1) are: —

"13(1)...no person shall drive a motor vehicle of any class... on a road unless he is the holder of a driving licence authorising him to drive a motor vehicle of that class...".

The disqualification referred to in the proviso in paragraph 5 of the policy is a disqualification from driving the motor-cycle described in the policy. Once the provisional driving licence expires he ceases to be the holder of a driving licence authorising him to drive a motor-cycle and as such a person he is expressly prohibited or disqualified by section 13(1) from driving a motor-cycle on a road.

I can see no ambiguity or doubt as to the extent of the insurance policy in question or in the interpretation to be put on the proviso in paragraph 5 of the policy. Whatever doubts that have arisen in the past seem to me to have arisen from the English cases of *Edwards v. Griffiths*⁽²⁾ and *Mumford v. Hardy and Another*⁽³⁾ where the relevant proviso in the insurance policy is similar in terms to the proviso contained in

A the policy before Chua J. in *R. v. Tan Hong Heng*⁽⁴⁾ decided in 1958. The proviso in the policy considered by Chua J. was in the following terms: —

"Provided that the person driving holds a licence to drive such motor-cycle or has held and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf for holding or obtaining such a licence."

B The proviso construed in the English cases refers to the holding of a licence to drive and to the disqualification for holding or obtaining a licence to drive whereas the proviso to be construed in the present case is completely different and refers, not to the holding of a licence to drive, but to the permission to drive and to disqualification, not for holding or obtaining a licence to drive, but from driving.

C I am aware that my judgment would appear to conflict with the decision in *Tan Kwang Chin v. Public Prosecutor*.⁽⁵⁾ In that Kedah case a person, who had a provisional driving licence which had expired two days previously, drove a motor car with the permission of the owner. He was convicted, *inter alia*, for driving the car without being covered by a third-party risks insurance policy, an offence punishable under regulation 3(ii) of the Motor Vehicles Third-Party Risks Regulation. The proviso in that policy is in identical terms with the proviso in the policy in the present case. The learned judge, relying on the English cases *supra*, held that the driver came within the category of a person who in the words of the proviso "has been so permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle." He held that there was no difference in meaning between the words of the proviso in the case before him and the words of the proviso in an unreported Penang case (Criminal Revision No. 9 of 1956) where Rigby J., also relying on the English cases *supra*, held that a driver who has forgotten to renew his licence, as distinct from one who never had a licence, is covered by the terms of his third-party risks policy which contains a proviso similar to the policy in *R. v. Tan Hong Heng, supra*.

G With the greatest respect, I am unable to agree with the decision in *Tan Kwang Chin v. Public Prosecutor, supra*, for the reasons I have already set out. It may well be that an insurance company would not insist upon the proviso clause in the policy because the driver had merely forgotten to renew his driving licence and it is to be hoped that no insurance company would so insist but the question to be decided in every case before a court under section 3 of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 is whether or not, as a matter of construction, a particular policy covers the defendant at the time he was driving the motor vehicle described in the policy and not whether or not the insurance company would regard itself as being on risk if an accident occurs.

I For the above reasons I would hold that the answer should be in the affirmative and in my opinion the magistrate was right in convicting.

Question answered in the affirmative.